

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

Mohamed Abdalla Mahmoud,

Case No.: 2:23-cv-01123-CDS-DJA

Petitioner

**Order Instructing Mahmoud to File  
§ 1983 Complaint or § 2254 Habeas  
Corpus Petition**

V.

Brian Williams,

## Respondent

Petitioner Mohamed Adballa Mahmoud, who is in the custody of the Nevada Department of Corrections (NDOC), submitted a petition for writ of habeas corpus pursuant to C. § 2254. ECF No. 1-1. Because Mahmoud did not properly commence this action by paying the standard filing fee or filing an application for leave to proceed *in forma pauperis*, I gave Mahmoud an additional 45 days to pay the filing fee or file an IFP application. ECF No. 1 granted Mahmoud's request for an extension of time to pay the filing fee or complete an application, and Mahmoud paid the filing fee on October 17, 2023. ECF Nos. 5, 6.

Although Mahmoud filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241, he refers to an ongoing state habeas corpus petition, the relief he seeks, and his claims, appear to be in the nature of civil rights claims. Mahmoud cannot pursue both types of claims in the same case. See *Nettles v. Grounds*, 830 F.3d 922, 927 (9th Cir. 2016) (reiterating that 2241 is the exclusive vehicle for claims brought by state prisoners that fall within the core of 2282, and such claims may not be brought in a § 1983 action"); *Wilkinson v. Dotson*, 544 U.S. 74, 80 (2005) (holding that "a state prisoner's § 1983 action is barred (absent prior invalidation—either the relief sought (damages or equitable relief), no matter the target of the prisoner's state conduct leading to conviction or internal prison proceedings)—if success in that action would necessarily demonstrate the invalidity of confinement or duration"). Mahmoud

1 may pursue either a § 1983 complaint or habeas petition in this case but not both. He may file the  
2 other action in a separate case.

3 If Mahmoud is attempting to initiate a civil rights lawsuit or petition for writ of habeas  
4 corpus, he must submit the appropriate forms. The Clerk of the Court will send Mahmoud  
5 courtesy copies of these forms to help him decide what type of lawsuit he is attempting to raise  
6 in federal court.

7 On or before December 29, 2023, Mahmoud must: (1) submit a § 1983 civil rights  
8 complaint on the appropriate form if he wishes to pursue a civil rights action; or (2) submit a  
9 petition for writ of habeas corpus on the appropriate form if he wishes to pursue a habeas  
10 corpus action. I further note that if Mahmoud intends to pursue a § 1983 civil rights action, he  
11 must pay the full \$402 filing fee for a civil rights action or file a fully complete application to  
12 proceed *in forma pauperis*.

13 If Mahmoud does not timely comply with this order, this case will be subject to  
14 dismissal without prejudice. If dismissed without prejudice, Mahmoud may refile the case,  
15 under a new case number.

16 I THEREFORE ORDER that on or before December 29, 2023, Mahmoud must: (1)  
17 submit a § 1983 civil rights complaint on the appropriate form if he wishes to pursue a civil  
18 rights action; or (2) submit a petition for writ of habeas corpus on the appropriate form if he  
19 wishes to pursue an habeas corpus action.

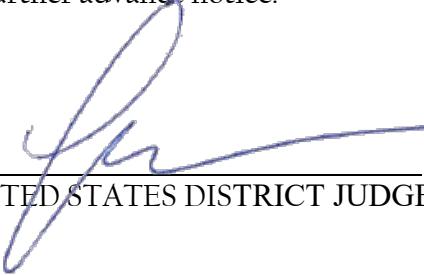
20 I FURTHER ORDER that if Mahmoud is seeking to initiate a civil rights lawsuit, he  
21 shall (1) file a fully complete application to proceed *in forma pauperis*; or (2) pay the full \$402  
22 filing fee for a civil rights action.

23 I FURTHER ORDER the Clerk of the Court to send to Mahmoud the approved form and  
24 instructions for filing a 42 U.S.C. § 1983 complaint and petition for writ of habeas corpus  
25 pursuant to 28 U.S.C. § 2254.

1 I FURTHER ORDER the Clerk of the Court to send to Mahmoud a blank form IFF  
2 application for incarcerated litigants along with instructions, and a copy of this order.

3 I FURTHER ORDER that Mahmoud's failure to comply with this order will result in the  
4 dismissal of this action without prejudice and without further advance notice.

5 DATED: November 16, 2023

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7 UNITED STATES DISTRICT JUDGE  
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